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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA IMMEDIATE

C O N F I D E N T I A L STATE 104554

E.O. 11652: GDS

TAGS:EFIS, PN

SUBJECT: PANAMANIAN ENFORCEMENT OF CLAIMED TERRITORIAL SEA

REF: A. PANAMA 3011, B. PANAMA 2973, C. STATE 103816

1. PANAMANIAN REQUEST FOR SEIZURE OF US FLAG VESSEL CREATES
DIFFICULTIES FOR USG IN TWO GENERAL AREAS: ONE IS MAIN-
TENANCE OF GOOD RELATIONS WITH GOP DURING DIFFICULT STAGE
OF CANAL NEGOTIATIONS; THE OTHER CONCERNS THE PRESERVATION
OF OUR NAVIGATIONAL RIGHTS AND FREEDOM ON THE HIGH SEAS;

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THE FREEDOM OF VESSELS TO ENTER AND EXIST THE CANAL, AND

THE RIGHT OF US FLAG TUNA VESSELS FISHING PURSUANT TO AN INTERNATIONAL AGREEMENT, TO WHICH THE GOP IS A PARTY, TO FISH IN THE IATTC REGULATORY AREA.

2. EMBASSY IS OF COURSE WELL AWARE OF DIFFICULTIES THIS PROBLEM CAN RAISE WITH RESPECT TO THE CANAL NEGOTIATIONS. HOWEVER, WITH RESPECT TO THE NAVIGATION AND FISHING ISSUES, THE DIFFICULTIES ARE ALSO POTENTIALLY VERY SERIOUS. US OCEANS POLICY IS BASED ON THE PREMISE OF RESTRICTING EXPANSION OF TERRITORIAL CLAIMS INTO THE HIGH SEAS. SINCE PANAMANIAN LAW SETS FORTH A 200 MILE TERRITORIAL SEA, POSITIVE USG REACTION TO PANAMANIAN CLAIMS BEYOND 12

MILES SERIOUSLY COMPROMISES USG POLICY POSITION.

3. IN THIS REGARD DEPT IS GRAVELY CONCERNED BY REFTEL A WHICH STATES THAT A NOTE "ALONG THE LINES" OF ONE PRESENTED AS A DRAFT NOTE IN REFTEL B WAS SENT TO GOP WITHOUT DEPT APPROVAL. REFTEL B SPOKE OF "COSTA RICAN WATERS" IN REFERENCE TO AN AREA OVER 100 MILES FROM THE COSTA RICAN COAST, AND OF "PANAMANIAN WATERS" IN AN AREA AT LEAST 15 MILES FROM A PANAMANIAN ISLAND. IF THESE REFERENCES WERE INCLUDED IN THE NOTE THAT WAS ACTUALLY SENT, USG POSITION WITH RESPECT TO PANAMANIAN 200 TERRITORIAL SEA CLAIM HAS BEEN SERIOUSLY COMPROMISED. IF THESE REFERENCES WERE INCLUDED IN THE NOTE ACTUALLY SENT, EMBASSY SHOULD CONSIDER WAYS IN WHICH RECORD CAN BE SET STRAIGHT AND COMMUNICATE THOSE IDEAS TO THE DEPT.

4. PER PARA 3 REF C EMBASSY SHOULD MAKE CLEAR TO GOP THAT THERE IS NO POSSIBILITY OF EXTRADITION OF MASTER AND/OR VESSEL IN THIS OR SIMILAR CASES. IF GOP CONTINUES TO RAISE THIS ISSUE, EMBASSY SHOULD TAKE THE APPROACH THAT THE USG DOES NOT RECOGNIZE PANAMANIAN TERRITORIAL SEA JURISDICTION, NOR DOES USG RECOGNIZE PANAMANIAN FISHING JURISDICTION OVER US FLAG TUNA VESSELS BEYOND 12 MILES. THEREFORE, USG DOES NOT RECOGNIZE THAT AN EXTRADITABLE OFFENSE HAS OCCURED.

5. SHOULD GOP RAISE QUESTION OF US 200 MILE FISHING
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LEGISLATION, EMBASSY SHOULD NOTE THAT THE LEGISLATION DOES NOT ASSERT THE EXCLUSIVE MANAGEMENT AUTHORITY OF THE UNITED STATES WITH RESPECT TO HIGHLY MIGRATORY SPECIES (TUNA). THE LEGISLATION DOES ASSERT THAT BECAUSE OF THE MIGRATORY NATURE OF SUCH SPECIES THEY SHOULD BE MANAGED THROUGH INTERNATIONAL ARRANGEMENTS. THEREFORE,
U.S. REACTION TO

PANAMANIAN REQUEST IS CONSISTENT WITH US LEGISLATION. MOREOVER, EMBASSY SHOULD NOTE THAT USG IS NOT BLIND TO FACT THAT EMERGENCE OF 200 MILE FISHING REGIMES MAY REQUIRE IATTC TO BE RENEGOTIATED TO TAKE THIS FACT INTO ACCOUNT. IN THAT REGARD THE USG HAS BEEN LOOKING FORWARD TO MEETING OF PLENIPOTENTIARIES CALLED BY MEXICO LATER THIS YEAR. IN THIS CONTEXT, AND BILATERALLY, USG IS PREPARED TO DISCUSS THE ISSUE OF COASTAL STATE INTEREST IN TUNA.

6. ANOTHER ISSUE WHICH CAUSES USG CONCERN IS THAT PANAMANIAN EFFORT SEEMS TO BE DIRECTED NOT ONLY AGAINST FOREIGN FISHING WITHIN CLAIMED PANAMANIAN WATERS, BUT ALSO AGAINST FISHING VESSELS MERELY TRANSITING THAT AREA.

THIS IS SUGGESTED BY SEIZURE OF SENAGALESE VESSEL WHICH WAS NOT FISHING, BUT WAS APPARENTLY ONLY TRANSITING THROUGH AREA. IF GOP'S INTENT IS ONLY TO ENFORCE ITS FISHERIES LAWS THIS WOULD BE OF SERIOUS CONCERN AND WOULD CAUSE USG SERIOUS PROBLEMS, BUT IS NONETHELESS A SITUATION WE PERHAPS COULD STRUGGLE THROUGH AS WE HAVE WITH ECUADOR, SINCE RELATIVELY SMALL AMOUNTS OF FISH ARE TAKEN OFF PANAMA, AND SINCE MIGRATORY NATURE OF TUNA WILL SOON TAKE THE FISH AWAY FROM AREA. HOWEVER, IF GOP INTENDS TO NOT ALLOW FISHING VESSELS TO TRANSIT THROUGH PANAMANIAN CLAIMED WATERS, WE HAVE A PROBLEM OF MUCH MORE SERIOUS MAGNITUDE. THIS WOULD BE PARTICULARLY ACUTE IN CASE OF PANAMA FOR US VESSELS WHICH NOT ONLY TRANSIT CANAL TO FISH IN ATLANTIC AND TO OFFLOAD CATCHES IN PUERTO RICO, BUT WHICH ALSO CONDUCT EXTENSIVE TRANSSHIPPING AND OTHER COMMERCIAL OPERATIONS (NON-FISHING) IN THE AREA. EMBASSY SHOULD ASCERTAIN GOP INTENTIONS IN THIS REGARD AS SOON AS POSSIBLE, AS 5 OR 6 U.S. FLAG VESSELS ARE PLANNING

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TRANSSHIPPING OPERATIONS NEAR PANAMANIAN ISLANDS. THIS IS STANDARD OPERATION OF LONGSTANDING IN THE AREA. MOREOVER, OTHER U.S. FLAG VESSELS WHICH HAVE BEEN FISHING IN OTHER AREAS WILL SOON BE WANTING TO TRANSIT CANAL TO OFFLOAD IN PUERTO RICO.

7. FINALLY, WITH RESPECT TO U.S. FLAG VESSELS VOYAGER AND KALI NOW IN THE CANAL ZONE, AS STATED ABOVE EXTRADITION IS NOT AN OPTION. VESSELS MUST AT SOME POINT EXIT THE CANAL. INDUSTRY SOURCES REPORT OWNERS ARE WILLING FOR VOYAGER AND KALI TO REMAIN IN THE CANAL FOR TIME BEING, BUT IT IS NOT CLEAR HOW LONG THIS COMMITMENT WILL LAST. OWNERS ARE CONCERNED ABOUT STANDING COSTS WHEN VESSELS IDLE, AND AT SOME POINT MAY CONCLUDE THEY WOULD BE BETTER OFF WITH SEIZURE UNDER FISHERMENS PROTECTIVE

ACT. DEPT CONCERNED THAT SEIZURE WOULD ALSO BRING
SANCTIONS INTO PLAY AND COULD PRODUCE DISRUPTIVE ELEMENT
IN RELATIONS AFFECTING OTHER MATTERS. FYI THE BOLD PRO-
DUCER, U.S. FLAG VESSEL ALLEGEDLY SHOT AT LAST MONDAY,
IS NEAR CATCH CAPACITY AND IS LOOKING TOWARD TRANSITING
CANAL NEXT WEEK IN ORDER TO UNLOAD CATCH IN PUERTO RICO.
VALUE OF TUNA ON THREE F/V'S PROBABLY \$2-3 MILLION. END FYI
8. EMBASSY SHOULD NOT SEND FORMAL COMMUNICATION TO THE

GOP ON NAVIGATIONAL OR FISHING ISSUES WITHOUT APPROVAL OF
DEPT. SISCO

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